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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-5565

ROBERT WAYNE WILLIAMS
PETITIONER

VERSUS

STATE OF LOUISIANA
RESPONDENT

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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APPEARANCE OF COUNSEL

To the Clerk of the United States Supreme Court:

Please enter my appearance as attorney for the State of Louisiana, Respondent, in the above entitled matter.

Respectfully submitted,

BY: Ralph L. Roy

RALPH L. ROY
ASSISTANT DISTRICT ATTORNEY

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CASES AND SOURCES CITED

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STATE OF LOUISIANA — RESPONDENT

OPPOSITION TO APPLICATION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT FOR THE STATE OF LOUISIANA

The petitioner, Robert Wayne Williams, is the requesting that this Honorable Court grant Writs of Certiorari to the review the judgment of the Louisiana State Supreme Court affirming his conviction and death sentence on April 7, 1980 (rehearing denied May 19, 1980).

CITATION TO OPINION BELOW

The opinion of the Supreme Court of the State of Louisiana is reported at 383 So.2d 369 (La. 1980) and is was attached to the brief of the defendant.

STATEMENT OF THE CASE

On January 5, 1979, Robert Wayne Williams and Ralph Holmes entered the A & P Supermarket on Perkins Road in Baton Rouge, Louisiana. Robert Wayne Williams was wearing a long coat which concealed a loaded shotgun, and his companion carried a pistol.

After entering the store, the defendant pointed his gun at Willie Kelly, a security guard who was helping one of the customers bag his groceries. As Willie Kelly (an elderly man who was armed with a pistol) turned to confront the defendant, Ralph Holmes began tugging at Kelly's pistol. Kelly's hand went toward the pistol, at which point Robert Wayne Williams leveled the shotgun at his face, said "don't try it" and fired. The shotgun blast virtually disintegrated Willie Kelly's face.

Subsequent to this murder, Robert Wayne Williams and Ralph Holmes robbed the A & P Market and escaped. They were later picked up and indicted for first degree murder. Robert Wayne Williams was convicted and sentenced to death, while Ralph Holmes, Williams companion, was sentenced to life imprisonment.

ARGUMENT

In its Reasons for granting Writ, the defense sets out the following:

1. The sentencing charged to the jury was unconstitutional. . . because the instructions failed to provide clear and objective standards for the exercise of the jury's sentencing discretion.

2. Petitioner was denied his constitutional rights under the 8th and 14th Amendments to the United States Constitution when the Supreme Court of Louisiana reviewed only one aggravating circumstance found by the jury to support its verdict of death.

3. The petitioner's right to an impartial jury under the 6th and 14th Amendments to the United States Constitution was violated by the dismissal for cause of three jurors who never stated that they were irrevocably committed to voting against the death penalty.

The State respectfully submits that reasons one and three are improperly presented to this Honorable Court. They were presented for the first time during the defense's Application for Rehearing to the Louisiana State Supreme Court. Neither of these grounds was objected to at trial nor briefed on appeal to the Louisiana State Supreme Court. The State respectfully submits that the Louisiana State Supreme Court could not consider these issued presented for the first time on rehearing and, as such, they are not properly presented before this Court. Tacon v. State of Arizona, 99 S.Ct. 998, 410 U.S. 351, 35 L.Ed. 2d 346. Should this Honorable Court decide to review these issues, it would be faced with a continuous and never-ending series of appeals on grounds not properly considered or reviewed by the highest court of the states. Because the Louisiana State Supreme Court never had the opportunity to properly address and decide these issues, the State respectfully submits that they are not proper grounds for issuance of a Writ of Certiorari.

In the alternative, if this Honorable Court should find that the issues are properly presented, the State would respectfully submit that the defendant's constitutional rights were not violated at this trial. The three jurors of which the defense complains were clearly against the death penalty, and the trial judge clearly stated the law to the jurors in the sentencing phase of the trial, portions of which have been held constitutional on their face in Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859. At any rate, the issue of the "heinous and atrocious" aggravating circumstance is superfluous in this matter because the jury found that multiple aggravating circumstances were present. The one aggravating circumstance which was reviewed by the Louisiana State Supreme Court was that the defendant committed the murder during the course of an armed robbery. This review by the Louisiana State Supreme Court is grounds for the defendant's second reason for granting the writ.

DID THE LOUISIANA STATE SUPREME COURT ERR IN CONSIDERING ONLY ONE OF THE AGGRAVATING CIRCUMSTANCES FOUND BY THE JURY?

The defendant is complaining here that the Louisiana State Supreme Court only reviewed one of the aggravating circumstances found by the jury and not all of them. The State submits that this review was full and sufficient to guarantee the defendant his constitutional rights.

The jury found three aggravating circumstances:

1. That the offender was engaged in the perpetration or attempted perpetration of . . . armed robbery. . . .

2. The offender knowingly created a risk of death or great bodily harm to more than one person.

3. The offense was committed in an especially heinous, atrocious or cruel manner.

Louisiana's capital sentencing scheme was found constitutional in Greg, supra, and it provides that, should the jury find at least one aggravating circumstance, it can properly return a recommendation of death. It is beyond the power of the appellate courts to look into the minds of the jurors and determine exactly why they made their decisions. Under the law, all that is required is that a jury unanimously find at least one aggravating circumstances for the sentence to be sustained on appeal. The jury in this matter clearly found, unanimously, that a death penalty was appropriate and that

three aggravating circumstances were present. There was sufficient evidence in the record to support the fact, as found by the Louisiana State Supreme Court, that the murder was committed in the course of an armed robbery. Because this finding satisfied the legal requirements, the Louisiana State Supreme Court affirmed the death sentence. It simply found that the death sentence satisfied the Louisiana law which has been held constitutional by this Honorable Court. Even if the Louisiana high court had decided that, after a careful review of the facts (which is forbidden on appeal by the Louisiana Constitution) that the murder was not committed in an especially heinous or atrocious manner, there was sufficient evidence to support the other two aggravating circumstances found by the jury. As such, the jury verdict would stand.

CONCLUSION

The State respectfully requests that this Honorable Court deny petitioner's application for Writs of Certiorari to the Louisiana State Supreme Court because he was given the benefit of a fair and impartial trial and full review of those questions properly presented. As such, his conviction should stand and his sentence be carried out.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
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BY: Ralph L. Roy
RALPH L. ROY
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STATE OF LOUISIANA

MOTION FOR LEAVE TO PRESENT OPPOSITION TO WRIT APPLICATION

NOW INTO COURT, through the undersigned counsel, comes the State of Louisiana to request leave to enter its opposition to the application for writs of certiorari in the above incaptioned matter. The defendant's application for writs and brief was misdirected and not received by this office until well after its filing with this Honorable Court.

WHEREFORE, the State of Louisiana prays that this opposition be considered timely and that this Honorable Court fully consider the State's opposition in its decision.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
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BY: Ralph L Roy
RALPH L. ROY
ASSISTANT DISTRICT ATTORNEY

ORDER

CONSIDERING THE FOREGOING MOTION:

IT IS ORDER, adjudged and decreed that the opposition to Writs of Certiorari and review in this matter be considered as if timely.

So ordered on the _____ day of _____, 1980, Washington, D.C.

_____
JUSTICE, UNITED STATES SUPREME COURT

CERTIFICATE OF SERVICE

I, Ralph L. Roy, a member of the Bar of the United States Supreme Court, Assistant District Attorney for the Parish of East Baton Rouge, represent the State of Louisiana, respondent herein. I hereby certify that I have served a copy of the foregoing Opposition to Application for Writs of Certiorari to the Supreme Court of Louisiana by depositing same in the United States Mail, first class postage prepaid, addressed to Mr. Richard E. Shapiro, counsel for petitioner, 344 Camp Street, Suite 708, New Orleans, Louisiana 70130, in accordance with Rule 33, Paragraph 1 of the Rules of the United States Supreme Court.

This 5th day of December, 1980.

Ralph L Roy

RALPH L. ROY
ASSISTANT DISTRICT ATTORNEY